

CUSTOMER NO.: 24498

Serial No.: 10/524,285

Office Action dated: September 27, 2007

Response dated: November 19, 2007

PATENT

PU020385

REMARKS

The Office Action mailed September 27, 2007 has been reviewed and carefully considered. No new matter has been added.

Claims 1-17 are currently pending and have been previously amended in a preliminary amendment to better comply with U.S. Practice.

Claims 1-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,826,6612 to Bosloy et al. (hereinafter "Bosloy").

It is to be noted that Claims 1, 6, and 13 are the pending independent claims in the case.

35 U.S.C. 103(a) Rejection of Claims 1-17

It is respectfully asserted that none of the cited references, either taken singly or in combination, teach or suggest "ignoring IGMP Membership Queries for the at least one multicast data group issued by the router so as to cause the router to terminate a transmission of the unrequested multicast data to free up available bandwidth for the download of the requested data," as recited in each of the independent Claims 1, 6, and 13.

The Examiner cited column 9, lines 45-56 of Bosloy as disclosing the same, noting that "Bosloy et al. does not teach that Internet Group Management Protocol (IGMP) is Internet Group Management Protocol (IGMP) V2" (Office Action, p. 3). The Examiner then continued "Liao teaches the use and benefits of Internet Group Management Protocol (IGMP) V2 [page 2]".

The Applicant respectfully disagrees with the Examiner's reading of the cited references. For example, column 9, lines 45-56 of Bosloy disclose the following:

Thus, in one embodiment of the invention, all of the groups included in the membership verification set of groups may simply be terminated or disconnected when a new group join request is received. This provides a simple and easy to implement technique that only terminates groups prematurely when a join request is received. Enabling bandwidth comparison allows for selective termination of groups to enable join requests to be serviced, which further enhances the efficiency with which the available bandwidth is utilized. If bandwidth comparison is determined to be enabled at step 109, the method proceeds to step 111.

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Initially, it is respectfully asserted that Bosloy does not even mention IGMP Membership Queries or even Membership Queries in the portion (column 9, lines 45-56 of Bosloy) cited by the Examiner, let alone ignoring (IGMP) Membership Queries, and further let alone ignoring (IGMP) Membership Queries so as to cause the router to terminate a transmission of the unrequested multicast data.

As is evident, "ignoring (240) IGMP Membership Queries for the at least one multicast data group issued by the router so as to cause the router to terminate a transmission of the unrequested multicast data to free up available bandwidth for the download of the requested data" as recited in each of Claims 1, 6, and 13 does not corresponding to receiving a *group join request* to terminate a group.

For example, an IGMP membership query is NOT a group join request. As disclosed at page 5, lines 5-7 of the Applicant's Specification, an "IGMP V2 Membership Query is used by a router to determine whether any group members exist for a particular multicast group". However, the determination of whether any group members exists for a particular multicast group as per the IGMP V2 Membership Queries recited in Claims 1, 6, and 13 does not correspond to joining a group as per the group join request disclosed in Bosloy.

Moreover, even assuming arguendo that an IGMP membership query as recited in Claims 1, 6, and 13 does correspond to a group join request as disclosed by Bosloy, or that Liao discloses an IGMP membership query, Claims 1, 6, and 13 recite that IGMP membership queries are IGNORED so as to cause the router to terminate a transmission of the unrequested multicast data, while Bosloy discloses the use (i.e., transmitting, receiving, and active processing, certainly the latter being the opposite of ignoring) of the group join request. In fact, as provided above, Bosloy explicitly discloses a "technique that ONLY terminates groups prematurely when a join request is received" (Bosloy, col. 9, lines 45-56). Bosloy's use of the word "ONLY" needs to be considered.

Accordingly, neither the cited sections of Bosloy or Liao, either taken singly or in combination, teach or suggest the above recited limitations of Claims 1, 6, and 13.

"To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art" (MPEP §2143.03, citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)).

CUSTOMER NO.: 24498**Serial No.: 10/524,285****Office Action dated: September 27, 2007****Response dated: November 19, 2007****PATENT****PU020385**

Thus, Claims 1, 6, and 13 are patentably distinct and non-obvious over the cited references for at least the reasons set forth above.

Additionally, Bosloy teaches away from the present principles as claimed. For example, a prior art reference must be considered in its entirety, i.e., as a whole, *including portions that would lead away from the claimed invention*. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed Cir. 1983), *cert. denied*, 469 U.S. 851 (1984) (emphasis added) (*see also*, MPEP §2141.03)). In consideration thereof, the Examiner is pointed to column 1, lines 58-62 of Bosloy, which explicitly disclose “[t]he prior art IGMP standards deal with the inclusion or deletion of particular multicast transmissions, or groups, from the communication link in an inefficient manner that reduce the overall functionality of the multicast system” (emphasis added) (*see also*, Bosloy, col. 1, line 63 to col. 2, line 39). Thus, the disclosure in Bosloy clearly and explicitly teaches away from the IGMP standards and the use of their corresponding queries.

Further, given Bosloy’s disparagement (essentially spanning the entire background section of Bosloy’s Patent) of the IGMP standards and their corresponding queries, and Bosloy’s corresponding complete avoidance in using and/or otherwise relying upon such queries, it is respectfully asserted that the result of the cited combination of Bosloy and Liao would change the principle of operation of Bosloy, which is explicitly proscribed under MPEP §2143.01.

The following text of MPEP §2143.01 is provided for the Examiner’s convenience:

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (Claims were directed to an oil seal comprising a bore engaging portion with outwardly biased resilient spring fingers inserted in a resilient sealing member. The primary reference relied upon in a rejection based on a combination of references disclosed an oil seal wherein the bore engaging portion was reinforced by a cylindrical sheet metal casing. Patentee taught the device required rigidity for operation, whereas the claimed invention required resiliency. The court reversed the rejection holding the “suggested

CUSTOMER NO.: 24498**Serial No.: 10/524,285****Office Action dated: September 27, 2007****Response dated: November 19, 2007****PATENT****PU020385**

combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." 270 F.2d at 813, 123 USPQ at 352.).

Thus, in Bosloy, the principle of operation involves the receipt of a group join request, where the disparagement of IGMP V1 and V2 queries and corresponding non-use thereof (where non-use altogether is clearly different than explicitly ignoring as recited in Claims 1, 6, and 13, as ignoring is being explicitly used by the inventions of Claims 1, 6, and 13 to accomplish a specified result) must be considered, while Liao discloses IGMP V2.

Thus, modifying Bosloy with Liao to arrive at the present invention as claimed in Claims 1, 6, and 13 would effectively change the principle of operation of either of these references, which is prohibited under MPEP §2143.01.

Accordingly, the combination of Bosloy and Liao is improper for at least the reasons set forth above.

"If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious" (MPEP §2143.03, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)).

Claims 2-5 depend from Claim 1 and, thus, includes all the elements of Claim 1. Claims 7-12 depend from Claim 6 or a claim which itself is dependent from Claim 6 and, thus, include all the limitations of Claim 6. Claims 14-17 depend from Claim 13 and, thus, includes all the elements of Claim 13. Accordingly, Claims 2-5, 7-12, and 14-17 are patentably distinct and non-obvious over the cited references for at least the reasons set forth above with respect to independent Claims 1, 6, and 13, respectively.

Accordingly, reconsideration of the rejections is respectfully requested.

CUSTOMER NO.: 24498**Serial No.: 10/524,285****Office Action dated: September 27, 2007****Response dated: November 19, 2007****PATENT****PU020385****CONCLUSION**

In view of the foregoing, Applicants respectfully request that the rejection of the claims set forth in the Office Action of September 27, 2007 be withdrawn, that pending claims 1-17 be allowed, and that the case proceed to early issuance of Letters Patent in due course.

No fee is believed due with regard to the filing of this amendment. However, if a fee is due, please charge Deposit Account No. 07-0832.

Respectfully submitted,

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